

REMARKS

I. INTRODUCTION

Claims 89-107 and 136-152 are under consideration in the above-referenced application.

II. REJECTION UNDER 35 U.S.C. §§ 102(e) AND 103(a) SHOULD BE WITHDRAWN

Claims 89-96, 102-104, 106, 136-142, 148-150, 152 and 154 stand finally rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,029,165 issued to Gable (the "Gable Patent"). Claims 97-101, 105, 143-147 and 151 stand finally rejected under 35 U.S.C. § 103(a) as being unpatentable over the Gable Patent, in view of U.S. Patent No. 5,978,842 issued to Noble et al. (the "Noble Patent"). Claims 107 and 153 stand finally rejected under 35 U.S.C. § 103(a) as being unpatentable over the Gable Patent, in view of U.S. Patent No. 6,029,175 issued to Chow et al. (the "Chow Patent").

The present application was filed on January 26, 1997. The Gable Patent, issued on February 22, 2000 and filed with the U.S. Patent and Trademark Office on November 12, 1997, is relied on by the Examiner as a reference under 35 U.S.C. § 102(e) for rejecting claims 89-96, 102-104, 106, 136-142, 148-150, 152 and 154 of the present application under 35 U.S.C. § 102(e) as being allegedly anticipated by this publication. In addition, the Gable Patent was relied on by the Examiner as a primary reference to reject claims 97-101, 105, 143-147 and 151 under 35 U.S.C. § 103(a) as being allegedly obvious over this reference, in alleged combination with the Noble Patent. Further, the Gable Patent was relied on by the Examiner as a primary reference to reject claims 107 and 153 under

35 U.S.C. § 103(a) as being allegedly obvious over this reference, in alleged combination with the Chow Patent.

Pursuant to 37 C.F.R. § 1.131, the Gable Patent can be antedated by filing a declaration establishing that the date of the present invention was earlier than the earliest effective 35 U.S.C. § 102(e) date of the '981 Publication, and that Applicants worked diligently to reduce the present application to practice thereafter (i.e., up to the filing of the present application). See 37 C.F.R. § 1.131. The earliest effective filing date of the Gable Patent is the filing date of the U.S. Patent Application Serial No. 08/967,775 from which the Gable Patent issued, i.e., November 12, 1997.

On July 28, 2008, Applicants submitted a declarations a declaration pursuant to 37 C.F.R. § 1.131 executed by the inventors of the present application in which it was confirmed that the invention recited at least in currently-pending independent claims 89, 136 and 154 of the above-referenced has been invented by Applicants prior to November 12, 1997, i.e., the earliest effective § 102(e) filing date of the Gable Patent, and that Applicants worked diligently to reduce the present application to practice thereafter (i.e., up to the filing of the present application). However, in the Office Action dated October 17, 2008, the Examiner indicated that the evidence submitted in such declaration to establish diligence from the earliest filing date of the Gable Patent to the filing date of the present application. In particular, the Examiner stated that "[n]one of the facts provided [in the declaration] address the 'diligence' between the critical date of November 12, 1997 and the date of the filing of the present application." (Office Action dated October 17, 2008, p. 11, para. 31).

Pursuant to the interview between Applicants' representative and the Examiner after the receipt of Office Action dated October 17, 2008 (the "Interview"), Applicants have further reviewed the facts and circumstances surrounding the conception, diligence and reduction to practice of the claimed subject matter as recited at least in currently-pending independent claims 89, 136 and 154 of the present application. To that effect, hereby submit another declaration which provides further detailed facts regarding the diligence to reduce the claimed subject matter as recited in these independent claims to practice between October 17, 1997 and January 26, 1998. Such information has been provided based on the suggestions of the Examiner during the Interview.

Thus, it is again confirmed that the invention recited at least in currently-pending independent claims 89, 136 and 154 of the above-referenced has been invented by Applicants prior to November 12, 1997, i.e., the earliest effective § 102(e) filing date of the Gable Patent, and that Applicants worked diligently to reduce the present application to practice thereafter (i.e., up to the filing of the present application).

Accordingly, the Gable Patent is not applicable for rejecting independent claims 89, 136 and 154 and claims which depend therefrom under 35 U.S.C. § 102(e) and also under 35 U.S.C. § 103(a). Further, without combining with the Gable Patent, the Noble Patent and the Chow Patent fail to teach or suggest the subject matter recited in independent claims 89, 136 and 154 and the claims which depend therefrom, and the Examiner does not contend that they do.

Therefore, Applicants respectfully assert that the Gable Patent has been antedated and cannot be used for a rejection of independent claims 89, 136 and 154, as well as the claims which depend therefrom, under 35 U.S.C. §§ 102(e) and 103(a). For at

least this reason, Applicants respectfully request that the rejection of claims 89-96, 102-104, 106, 136-142, 148-150, 152 and 154 under 35 U.S.C. § 102(a) as allegedly being anticipated by the Gable Patent, of claims 97-101, 105, 143-147 and 151 as being allegedly unpatentable over the Gable Patent in combination with the Noble Patent, and of claims 107 and 153 as being allegedly unpatentable over the Gable Patent in combination with the Chow Paten, be withdrawn.

III. CONCLUSION

In light of the foregoing, Applicants respectfully submit that all pending claims 89-107 and 136-152 are in condition for allowance. Prompt consideration, reconsideration and allowance of the present application are therefore earnestly solicited.

Respectfully submitted,

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